

REMARKS

Reconsideration and further examination of the present application is respectfully requested. The Office Action has rejected claims 1-39. Applicants have amended claims 1 and 25; canceled claims 2 and 26; and added no new claims. Claims 1, 3-25, and 26-39 are currently pending.

Applicants thank the Examiner for the allowability of claims 16-24 if rewritten or amended to overcome the rejections 35 USC 112, second paragraph. Applicants thank the Examiner for the allowability of claims 2, 4-15, and 26-39 if rewritten or amended to overcome the rejections 35 USC 112, second paragraph and/or to include all of the limitations of the base claim and any intervening claims.

Specification

The Office Action objected to the abstract of the disclosure for containing the word "comprises." Applicants have amended the abstract accordingly.

The Office Action objected to paragraph 0005 for incorrect capitalization. Applicants have amended this paragraph in a non-narrowing manner to correct this typographical error.

Drawings

The Office Action objected to Figures 1a-e and 2a-b as not being designated as "Prior Art." Applicants have amended these figures accordingly.

35 USC § 112

The Office Action rejected claims 1-39 under 35 USC 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicants regard as the invention. Specifically, the Office Action rejected claims 1, 3-4, 10, 15-25, 27-28, 34, and 39 on the basis that "it is unclear whether 2/3 means '2 or 3' or '2 and 3'." The Office Action allowed claims 2, 4-15, and 26-39 if rewritten or amended to overcome the rejections 35 USC 112, second paragraph and claims 2, 4-15, and 26-39 if rewritten or amended to overcome the rejections 35 USC 112, second paragraph and/or to include all of the limitations of the base claim and any intervening claims.

Applicants respectfully submit that “2/3” is defined in the specification. Specifically, “According to one embodiment of the invention, one or more non-BLSR protected channels is added to a ring to carry Layer 2/3 TDM traffic (referred to herein as a non-BLSR protected Layer 2/3 channel). (Paragraph 0043.) “The term Layer 2/3 TDM traffic is used herein to refer to traffic that is in some packet based form (e.g., Ethernet, IP, ATM, IP, etc) that: 1) can be extracted from the Layer 1 TDM format used to carry the Layer 2/3 TDM traffic on the spans; and 2) can be switched on a packet basis by the hybrid network elements described above.” (Paragraph 0044.)

Therefore, Applicants respectfully submit that claims 16-24 are allowable in their current form and overcome the 112 rejection. Claims 5-10, 11-15, 29-34, and 35-39 are allowable for at least the same reason.

However, if the rejections are maintained, Applicants would consider amending the above claims to include “2 and/or 3.” Applicants have chosen not to make this amendment at this time as this amendment does not seem as clear as “2/3.”

35 USC § 102

The Office Action rejected claims 1, 3, and 25 under 35 USC 102(e) as being anticipated by Swinkels, et al., US Patent No. 6,795,394 (hereinafter “Swinkels”).

While Applicants do not necessarily agree with the rejections, Applicants have amended claims 1 and 25 to include the limitations of claims 2 and 26 respectfully. As claims 2 and 26 were deemed allowable if rewritten or amended to overcome the rejections 35 USC 112, second paragraph and to include all of the limitations of the base claim and any intervening claims, Applicants respectfully submit that claims 1 and 25 are allowable.

Claims 3-4 and 26-28 are dependent upon claims 1 and 25 respectively and are allowable for at least the same reason.

Conclusion

In view of the foregoing remarks and amendments, it is respectfully submitted that the present application is in condition for allowance.

Invitation for a telephone interview

The Examiner is invited to call the undersigned at 408-720-8300 if there remains any issue with allowance of this case.

Charge our Deposit Account

Please charge any shortage to our Deposit Account No. 02-2666.

Respectfully submitted,

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Amendments to the Drawings:

The attached sheets of drawings include changes to Figures 1(a)-(e) and 2(a)-(b).

These sheets replace the original Figures 1(a)-(e) and 2(a)-(b).

Attachments: Replacement Sheets